

# Milw ordinance on unrelated adults

Contributed by Tim Ballering  
Friday, 01 June 2007

There has been a lot of discussion recently on the ApartmentAssoc at YahooGroups.com email list about the Milwaukee ordinance that prohibits more than 3 three unrelated adults from occupying a dwelling unit within the city. Milwaukee had adopted the ordinance in response to misbehaving UWM students. I have posted my comments from the email discussion list here to avoid reposting the same message multiple times.

Owners are put in the precarious position of complying with the ordinance at the risk of violating federal and state fair housing laws, which prohibit discrimination based on familial status.

Milwaukee Ordinance 200-80-30 defines a family as:

"33. FAMILY means, unless otherwise specified, a person occupying a dwelling unit, or dwelling unit with one or more persons who are legally related to such occupant by virtue of being husband and wife, son or daughter, mother or father, sister or brother, uncle or aunt, grandparent, grandchild, niece or nephew, cousin, mother-in-law or father-in-law, all of whom comprise no more than one nuclear family unit per household. Included in the term family are 4 or fewer legally assigned foster children, except that more than 4 may be legally assigned if all are related to one another as brothers or sisters. "

Milwaukee 275-44 gives the area requirements per occupant as:

275-44. Space Requirements. 1. MAXIMUM OCCUPANCY. a. The maximum occupancy for a one room dwelling unit shall be 2 people. b. No dwelling unit consisting of 2 or more rooms shall be occupied by more occupants than the total number which is calculated on the following basis:

## TYPE OF ROOM OCCUPANCY SUBTOTAL

Kitchen..... 0

Each habitable room containing less than 70 square feet of floor area ..... 0

Each habitable room containing at least 70 but less than 100 square feet of floor area ..... 1

Each habitable room containing 100 or more square feet of floor area..... 2

The WI Open Housing statue is:

§106.50 Open housing. (1) INTENT. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry and it is the duty of the political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under ss. 66.0125 and 66.1011.

[Link to the statute \(Open housing begins at 106.50\)](#)

The city ordinance runs contrary to marital status protections and in certain cases the sexual orientation provisions of the Wisconsin law.

One knowledgeable property manager felt that the family status provision of the WI statute allows the city to have such an ordinance. My reading is WI family status, while worded differently, mirrors the protections offered under federal law for families with children, thereby extending the protections against discrimination against families with children to state law. Any other reading would render the marital status provision void in most instances.

WI family status section reads:

§106.50 (1m)(k) "Family status" means any of the following conditions that apply to a person seeking to rent or purchase housing or to a member or prospective member of the person's household regardless of the person's marital status:

1. A person is pregnant.
2. A person is in the process of securing sole or joint legal custody, periods of physical placement or visitation rights of a minor child.
3. A person's household includes one or more minor or adult relatives.
4. A person's household includes one or more adults or minor children in his or her legal custody or physical placement or with whom he or she has visitation rights.
5. A person's household includes one or more adults or minor children placed in his or her care under a court order, under a guardianship or with the written permission of a parent or other person having legal custody of the adult or minor child.

Cities can and should regulate the number of persons in a household, but under fair housing it cannot regulate the relationship of those occupants to each other. It is very clear in the WI-DWD booklet ([link below.](#)) "• A family with "too many" people may be turned away, if a reasonable government requirement limits the number of occupants for the dwelling unit."

Link to the WI-DWD Booklet

The statute reads:

§106.50 (5m) (e) It is not discrimination based on family status to comply with any reasonable federal, state or local government

restrictions relating to the maximum number of occupants permitted to occupy a dwelling unit.

The governing statute is terrible as it potentially holds the lessor responsible if the government regulations are deemed unreasonable. However one at least try to use this statute as an argument in their defense if in the process of complying with Milwaukee's "UW" ordinance they are hit with discrimination charges due to their attempt to comply with city ordinance. In fact they should probably attempt to add Milwaukee as a third party defendant.

A couple of US Supreme Court cases dealt with this issue. Read the very interesting descent by Justice Marshall in Belle Terre. Belle Terre was pre-familial status protections. Edmonds, also attached, was after the implementation of familial status as a protected class. Links to the cases:

Edmonds:

<http://laws.findlaw.com/us/514/725.html>

Belle Terre (Pre familial status rules, read the Marshall descent)

<http://laws.findlaw.com/us/416/1.html>

Under Milwaukee's square footage calc a large 4 bed room with double front room would legally be able to house 12 occupants (2 in each of the six habitable rooms)

The unrelated occupants ordinance puts the owner in a precarious position. Let's say you have a standard policy at all your properties of two people per bedroom, a standard that has been accepted by the HUD fair housing folks and if all the occupants are related also permitted by the Milwaukee code. Let's also make your current vacancy a huge 4 bedroom double front room single family.

A married couple with ten kids comes along - fine under fair housing and the Milwaukee code. Let's make all the kids adults. Other than failed parenting because all ten of your adult kids are at home, everything is fine under the city code.

Now let's say two brothers and their girl friends want the unit. We can even throw in a few kids if one of the brothers are the father. Still fine. Now let's make it two couples, no brothers, no kids. Now you are in trouble with Milwaukee if you rent to them, but in trouble with fair housing as soon as you say 'I won't rent to you because you are not married.' This is because the house was fine for the 12 adults in the first example but not fine for only four under the last example simply because of marital status, a protected class at state and federal level.

The city will ultimately lose a case on the fair housing aspect of this as the federal courts have repeatedly said family status based occupancy ordinances are illegal. The only ordinances that are valid are square footage based. You do not want to be the test case either with the city or with a prospective tenant suing you under fair housing.